

FISCAL NOTE

Bill #: SB0037

Title: Revise DUI laws and penalties

Primary Sponsor: Mahlum, D

Status: As Amended in House Committee

Sponsor Signature Date

Chuck Swysgood, Budget Director Date

Fiscal Summary

| | <u>FY 2003</u> <u>Difference</u> | <u>FY 2004</u> <u>Difference</u> | <u>FY 2005</u> <u>Difference</u> |
|--|---|---|---|
| Expenditures: | | | |
| General Fund | \$59,400 | \$11,817 | \$11,817 |
| Revenue: | | | |
| General Fund | \$0 | (\$213,371) | \$88,513 |
| State Special Revenue | \$0 | \$215,000 | \$414,500 |
| Federal Special Revenue | \$0 | (\$8,016) | \$0 |
| Other | \$0 | (\$12,600) | \$0 |
| Net Impact on General Fund Balance: | (\$59,400) | (\$225,188) | \$76,696 |

| <u>Yes</u> | <u>No</u> | | <u>Yes</u> | <u>No</u> | |
|-------------------|------------------|----------------------------------|-------------------|------------------|-------------------------------|
| | X | Significant Local Gov. Impact | X | | Technical Concerns |
| | X | Included in the Executive Budget | | X | Significant Long-Term Impacts |
| | X | Dedicated Revenue Form Attached | X | | Needs to be included in HB 2 |

Fiscal Analysis

ASSUMPTIONS:

Department of Justice

Motor Vehicle Division

1. This bill increases the penalties for DUI/BAC convictions and implied consent refusals and expunges the first offense record from the driver's history if the individual does not re-offend within five years.

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| | | |
|---|--|---|
| | <p>\$500 -\$1,000 fine</p> <p>DRIVER LICENSE REVOCATION - 6 months Probationary License Permitted</p> <p>\$100 reinstatement fee</p> | <p><i>All may be suspended except 10 days</i> \$500 -\$1,000 fine</p> <p>DRIVER LICENSE REVOCATION - 1 year <i>NO Probationary License</i> if caused an accident, refused testing, and alcohol concentration above 0.12 Record only available to law enforcement and courts</p> <p><i>Interlock for 12-mos after 1-yr revocation</i> <i>\$500 reinstatement fee</i></p> |
| 4th + Felony | <p>13 months to Dept of Corrections Up to 5 years probation \$1,000 to \$10,000 fine</p> <p>DRIVER LICENSE REVOCATION - 1 year \$100 reinstatement fee</p> | <p>No change <i>EXCEPT</i> report names of persons convicted of felony to department of revenue for creation and maintenance of electronic list to allow store manager, retail licensee or employee to refuse to sell alcoholic beverage to person whose name appears on list</p> <p>DRIVER LICENSE REVOCATION - 5 years <i>NO Probationary License</i> first 2-years <i>Probationary license</i> for last 3-years, with interlock and OK from probation officer <i>\$500 reinstatement fee</i></p> |
| 1st Testing Refusal Under Implied Consent Law | <p>DRIVER LICENSE SUSPENSION - 6 months NO Probationary License \$100 reinstatement fee</p> | <p>DRIVER LICENSE SUSPENSION - 1 year NO Probationary License \$100 reinstatement fee</p> |
| 2nd + Testing Refusal within 5 years of 1st | <p>DRIVER LICENSE REVOCATION - 1 year NO Probationary License \$100 reinstatement fee</p> | <p>DRIVER LICENSE REVOCATION - 2 years NO Probationary License \$100 reinstatement fee</p> |

2. DUI violations issued prior to 6/30/2003 can be included in the calculation for determining whether the driver has received a DUI five years before the one in question.
3. In calendar year 2001 there were approximately 4,300 first offense and 1,500 second and subsequent DUI/BAC offense driver license revocation actions processed by the Motor Vehicle Division. Actual data is unavailable to identify the number of second and third offense DUI and BAC convictions; however, random sampling indicates that of the second and subsequent DUI/BAC offenses, 67 percent are second offenses, and 33 percent are third offenses. Therefore, in 2001 there were approximately 4,300 first, 1,005 second, and 495 third DUI/BAC offenses.

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4. It is assumed that there is no change in reinstatement fee revenue for the 4,300 first offenses, resulting in a general fund loss of \$215,000 each year with state special revenue being increased by a like amount. This bill increases the period of time that probationary driver's licenses are not available for those convicted of second and subsequent offenses. Assuming the number of second and third offenses remains constant, reinstatement fee revenues deposited in the state general fund would decrease approximately \$50,250 in FY 2004 ($1,005 \times \$100 \times .5$) and increase \$100,500 ($1,005 \times \$200 \text{ increase} \times .5$) in FY 2005 for second offenses. For third offenses the decrease will be approximately \$24,750 ($495 \times \$100 \times .5$) in FY 2004 and increase approximately \$99,000 ($495 \times \$400 \times .5$) in FY 2005.
5. Additionally, driver license fee revenues would decrease approximately \$48,000 in FY 2004 due to the implementation of the extended period of the driver license revocation for second and subsequent offenses. This is assuming individuals whose driver's licenses are revoked for second or third DUI/BAC offenses obtain an 8-year drivers license upon reinstatement at \$4/year. ($1,500 \times \$32 = \$48,000$)
6. The revenues for the driver license fees are distributed 16.7 percent to the state special revenue account for the MHP retirement account, 26.25 percent to the state traffic education account, 54.55 percent to the state general fund, and 2.5 percent is retained by county treasurer if the fees are collected by the county treasurer's office or is deposited in the state general fund if the fees are collected by the Motor Vehicle Division.
7. Approximately, 2,800 first offense DUI/BAC offenses would be masked systematically from the driver history files annually assuming the current trends remain constant. ($4,300 \text{ 1}^{\text{st}} \text{ offenses} - 1,500 \text{ 2}^{\text{nd}} \text{ or subsequent offenses} = 2,800 \text{ 1}^{\text{st}} \text{ offenses to be masked}$)
8. Administrative expenses will increase \$24,600 in FY 2003 for programming to add reinstatement, action and requirement codes, change the consolidated fee report to show the reinstatement fees collected and deposited to the state general fund and the state special revenue account, mask certain alcohol convictions to disseminate the information only to law enforcement and courts, to create a report for DUI convictions within the last five years; and work with the courts to provide the courts the ability to issue a probationary driver's license and allow access to the driver license system and equip the courts with the digital driver licensing system. Additionally, operating expenses would increase \$34,800 for computer processing time generated during the programming design, testing, and implementation phase. The database will need to be restructured to mark a conviction as masked. Total costs for programming in FY 2003 are estimated to be \$59,400.

Montana Highway Patrol

9. The Montana Highway Patrol (MHP) arrested 2,499 individuals for DUI in 2001.
10. It is assumed that 1,650 were first time offenders; 549 were second time offenders; and 300 were third or subsequent offenders.
11. For the first time offenders, the penalty remains the same.
12. For the second time offenders, the fine will increase \$225, creating \$123,525 in revenue. Jail time will remain the same.
13. For the third time offenders, the fine will increase \$250, creating \$75,000 in revenue. There will be no additional jail time.
14. The Montana Highway Patrol arrested 106 individuals for DUI Per Se violations in 2001.
15. It is assumed that 66 were first time offenders; 20 were second time offenders; and 20 were third time offenders.
16. For the first time offenders, the penalty remains the same.
17. For the second time offenders, the fine will increase by \$225, creating \$4,500 in revenue. Jail time will increase by 3 days costing \$3,223 in additional expenses.

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18. For the third time offenders, the fine will increase by \$250, creating \$5,000 in revenue. Jail time will increase by 8 days costing \$8,594 in additional expenses.
19. Total operating expenses to the general fund will increase by \$11,817 each fiscal year for increased jail time.
20. Fifty percent of \$208,025 total revenue will be equally distributed between local governments and the state general fund.

Department of Transportation

21. The reinstatement fees in section 2 (2) that are to be distributed to county drinking and driving prevention programs will be distributed by the Highway Traffic Safety Program within the Department of Transportation.

FISCAL IMPACT:

| | <u>FY 2003 Difference</u> | <u>FY 2004 Difference</u> | <u>FY 2005 Difference</u> |
|--|-------------------------------|-------------------------------|-------------------------------|
| Department of Justice | | | |
| Motor Vehicle Division-Program 12 | | | |
| <u>Expenditures:</u> | | | |
| Operating Expenses | \$59,400 | \$0 | \$0 |
| <u>Funding of Expenditures:</u> | | | |
| General Fund (01) | \$59,400 | \$0 | \$0 |
| <u>Revenues:</u> | | | |
| General Fund (01) | \$0 | (\$317,384) | (\$15,500) |
| State Special Revenue (02)/County Programs | \$0 | \$215,000 | \$414,500 |
| State Special Revenue (02)/MHP Ret. | \$0 | (\$8,016) | \$0 |
| State Special Revenue (02)/Traffic Ed | \$0 | (\$12,600) | \$0 |
| Highway Patrol Division-Program 13 | | | |
| <u>Expenditures:</u> | | | |
| Operating Expenses | \$0 | \$11,817 | \$11,817 |
| <u>Funding of Expenditures:</u> | | | |
| General Fund (01) | \$0 | \$11,817 | \$11,817 |
| <u>Revenues:</u> | | | |
| General Fund (01) | \$0 | \$104,013 | \$104,013 |
| Department of Transportation | | | |
| Transportation Planning Division-Program 50 | | | |
| <u>Expenditures:</u> | | | |
| Transfers to Counties | \$0 | \$215,000 | \$414,500 |

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Funding of Expenditures:

| | | | |
|--|-----|-----------|-----------|
| State Special Revenue (02)/County Programs | \$0 | \$215,000 | \$414,500 |
|--|-----|-----------|-----------|

Net Impact to Fund Balance (Revenue minus Funding of Expenditures):

| | | | |
|--|------------|-------------|----------|
| General Fund (01) | (\$59,400) | (\$225,188) | \$76,696 |
| State Special Revenue (02)/County Programs | \$0 | \$0 | \$0 |
| State Special Revenue (02)/MHP Ret. | \$0 | (\$8,016) | \$0 |
| State Special Revenue (02)/Traffic Ed | \$0 | (\$12,600) | \$0 |

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Local governments will receive additional revenue.

LONG-RANGE IMPACTS:

There may be the risk for litigation against the state due to the implications of the masking of a DUI/BAC conviction from an individual's driver's license history as provided by this bill.

TECHNICAL NOTES:

1. Title 49 CFR 384.226 of the federal laws prohibit(s) both conviction masking and deferral programs by requiring every state to keep a complete driving record of all violations of traffic control laws (including commercial motor vehicle and non-commercial motor vehicle violations) by any individual to whom it has issued a commercial driver's license, and to make complete driving records available to all authorized persons and governmental entities having access to such record. This provision provides that a state may not allow information regarding such violations to be masked or withheld in any way from the record of a commercial driver license holder. If a non-commercial driver subsequently obtains a commercial driver's license, the driver history record maintained by the state would not be in compliance with the federal laws if that individual had previously been convicted of an expunged DUI/BAC first offense.
2. If restricting the release of the certain DUI/BAC convictions is interpreted as masking convictions, which is in violation of 49 CFR, that could result in the loss of up to 10 percent of federal highway funding.
3. The cost of making the digital driver license system available in the courts is not known nor is the number of courts that will need this capability. A process currently exists for the issuance of probationary driver licenses by the Department of Justice, Motor Vehicle Division. Additionally, it is unclear as to who would be responsible for paying for the additional cost of this equipment and access in the courts.